IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 850 OF 1992.

1. Shri Ramkrishna Pandharinath Panchdhare, age 49 years, Occ: Agriculturist, resident of 790, Govind-Pura, Pandharpur, District Solapur.
2. Smt. Indirabai Haridas Panchdhare, age 60 years, Occ: Agriculturist, resident of 790, Govind-Pura, Pandharpur, District Solapur.

.. Petitioners (Orig. Plffs.)

Versus

Dattatraya Gopal Dongare, age 55 years, Occupation Service, resident of 790, Govindpura, Pandharpur, Dist. Solapur. .. Respondent (Ori.Defnt.)

Ms. S.G. Pawar i/b A.P. Mundargi for the appellant.

None for the respondent.

CORAM: ANOOP V. MOHTA, J.

DATED: 12TH JULY, 2005

ORAL JUDGMENT. :

1. The petitioners-landlords have invoked Article 227 of the Constitution of India and seek to challenge the reversal finding given by the Additional District Judge, Pandharpur (Appellate Court) dated 15th November, 1991, whereby, respondent-tenants' Appeal was allowed

and the judgment and decree passed by the Civil Judge, Junior Division, Pandharpur (Trial Court) dated 8th April, 1986, was set aside. That resulted into dismissal of the suit for possession of the premises in question on the ground of arrears of rent, bonafide need, comparative hardship, and unauthorised permanent construction.

2. The premises in question bearing CTS No.790 situated at Govind-Pura, Pandharpur, District Solapur, consisting of two rooms on monthly rent of Rs.15/-. The suit was filed in the Trial Court against the respondent on the foundation that tenant-respondent was in arrears of rent from 1/12/1972, change of user of the premises from commercial to residential and made permanent construction without previous written permission and above all, required the suit premises for his bonafide need and occupation and, thereby, invoked the provision of the Bombay Rents, Hotel Lodging House Rates (Control) Act, 1947 (for short "The Bombay Rent Act"). The notice dated 10th November, 1980, was served and the tenant was called upon to vacate the premises. The said notice was replied and application No.102 of 1980 under Section 11 of the Bombay Rent Act was also filed. The learned Trial Court, after considering the evidence led by the parties held that the petitioner-landlords proved that

respondent-tenant was a defaulter; that he made illegal permanent constructions; that the landlord requires the premises for personal bonafide use and occupation; the issue of greater hardship also tilted in favour of the petitioner-landlords; that the petitioner-landlords are, therefore, entitled for the possession and decreed the suit accordingly. The Appellate Court, however, reversed the said finding on all counts. Therefore, the present Writ Petition by the petitioners-landlords.

3. Heard the learned counsel Ms. S.G. Pawar appearing for the petitioners-landlords. None appeared for the respondent, though served. The undisputed position which can be borne out from the record is that the Municipal Council, Pandharpur issued notice to the petitioners-landlords to close the old type of latrine and to construct new type of latrine. It was not disputed by the respondent-tenant in his cross-examination. At the East side of the suit premises, there is a holy place *"Samadhi"*. Religious functions are being performed near this *Samadhi*. The petitioners-landlords want to construct new latrine at the place of the suit premises. The petitioners-landlords, in such background and specially confronted with the notice of the Municipal Council, cannot be said to be not in need of the premises in question. Admittedly, the premises

are in dilapidated condition. Admittedly, the respondent-tenant reconstructed or made permanent construction of the roof. All these alterations and/or constructions are made without the permission of the landlords. This fact is further borne out from the record as the tenant failed to deposit the rent on the foundation of the expenses incurred by him for the construction of the roof in question.

4. This further demonstrates that the tenant was admittedly in arrears of rent as he had not paid the rent regularly. If there is no permission obtained from the landlords any construction carried out cannot be said to be valid. In this background, there is no justification for the tenant not to make the payment of rent regularly. The issue of greater hardship, if considered in view of the above background, I am of the view that it should tilt in favour of the petitioners-landlords. The Trial Court, in my view, considering the material, as well as, the evidence led by the parties, was right in granting the decree for possession.

5. The learned counsel appearing for the petitioners has rightly relied on (1998) 8, S.C.C., Pg.119 **Sarla Ahuja Vs. United India Insurance Co. Ltd.** and specially paragraph 14 which is reproduced as under:

> "When a landlord asserts that he requires his building for his own occupation, the Rent Controller shall not proceed on the presumption that the requirement is not bona fide. When other conditions of the clause are satisfied and when the landlord shows a prima facie case, it is open to the Rent Controller to draw a presumption that the requirement of the landlord is bona fide."

6. The above observation of the Apex Court fully supports the submission made by the learned counsel for the petitioners in the facts and circumstances of the present case. The Appellate Court, therefore, was wrong in reversing the reasoned order passed by the Trial Court by observing as follows:

> "It is not understood as to why he cannot erect the same at the same place, where the old one is standing. Though it is contended that new latrine construction cannot be made at the old place because all the religious functions are performed near Samadhi, which is situated towards the east side of the premises."

Apart from the notice from the Municipal Council as referred above, it is difficult to insist that the landlord should construct the latrine near the place where the religious functions are performed. The above reasoning, according to me, is not acceptable in the facts and circumstances of the case. The issue of

greater hardship, therefore, rightly tilts in favour of the petitioners-landlords as observed by the Trial Court.

7. The learned Appellate Court was also wrong in observing that "It is immaterial that the tenant admit in his cross examination that he did not pay rent to the landlord since 1976 onward because he has done construction in the suit premises worth Rs.700/- or Rs.750/-. It is immaterial that the same plea has not been mentioned in the written statement." In my view, in view of the fact that one of the foundation of the case of the landlords is of arrears of rent, it is difficult to overlook this admission. This is also an additional factor which goes in favour of the landlord and against the tenant.

8. In view of the above, I am inclined to interfere with the finding given by the Appellate Court. The judgment and order dated 15th November, 1991, passed by the Appellate Court is quashed and set aside. The judgment and order dated 8th April, 1986, passed by the Trial Court is restored. The suit is decreed accordingly.

9. The Writ Petition is allowed. Rule is made absolute. No order as to costs.

[ANOOP V. MOHTA, J.]

[srpasha@hc]